

§ 240.12b-21 Information unknown or not available.

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions.

(a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

§ 240.12b-22 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

§ 240.12b-23 Incorporation by reference.

(a) Except for information filed as an exhibit which is covered by Rule 12b-32 (17 CFR 240.12b-32), information may be incorporated by reference in answer, or partial answer, to any item of a registration statement or report subject to the following provisions:

(1) Financial statements incorporated by reference shall satisfy the requirements of the form or report in which they are incorporated. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is given;

(2) Information in any part of the registration statement or report may be incorporated by reference in answer, or partial answer, to any other item of the registration statement or report; and

(3) Copies of any information or financial statement incorporated into a registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statement, shall be filed as an exhibit to the statement or report, except that:

(i) A proxy or information statement incorporated by reference in response to Part III of Form 10-K and Form 10-KSB (§ 249.310 and § 249.310b); and

(ii) A form of prospectus filed pursuant to § 230.424(b) incorporated by reference in response to Item 1 of Form 8-A (§ 249.208a) need not be filed as an exhibit.

(b) Any incorporation by reference of matter pursuant to this section shall be subject to the provisions of § 228.10(f) and § 229.10(d) of this chapter restricting incorporation by reference of documents which incorporate by reference other information. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. Where only certain pages of a document are incorporated by reference and filed as an exhibit, the document from which the material is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear or confusing.

[47 FR 11466, Mar. 16, 1982, as amended at 57 FR 48977, Oct. 29, 1992; 60 FR 32825, June 23, 1995]

§ 240.12b-24 [Reserved]**§ 240.12b-25 Notification of inability to timely file all or any required portion of a Form 10-K, 10-KSB, 20-F, 11-K, N-SAR, Form 10-Q or Form 10-QSB.**

(a) If all or any required portion of an annual or transition report on Form

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10-K, 10-KSB, 20-F or 11-K or a quarterly or transition report on Form 10-Q or 10-QSB required to be filed pursuant to sections 13 or 15(d) of the Act and rules thereunder or if all or any portion of a semi-annual, annual or transition report on Form N-SAR required to be filed pursuant to section 30 of the Investment Company Act of 1940 and the rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b-25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) With respect to any report or portion of any report described in paragraph (a) of this section which is not timely filed because the registrant is unable to do so without unreasonable effort or expense, such report shall be deemed to be filed on the prescribed due date for such report if:

(1) The registrant files the Form 12b-25 in compliance with paragraph (a) of this section and, when applicable, furnishes the exhibit required by paragraph (c) of this section;

(2) The registrant represents in the Form 12b-25 that:

(i) The reason(s) causing the inability to file timely could not be eliminated by the registrant without unreasonable effort or expense; and

(ii) Either the subject annual report, semi-annual report or transition report on Form 10-K, 10-KSB, 20-F, 11-K or N-SAR, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report or transition report on Form 10-Q or 10-QSB, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; and

(3) The report/portion thereof is actually filed within the period specified by paragraph (b)(2)(ii) of this section.

(c) If paragraph (b) of this section is applicable and the reason the subject report/portion thereof cannot be filed timely without unreasonable effort or expense relates to the inability of any person, other than the registrant, to furnish any required opinion, report or

certification, the Form 12b-25 shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

(d) Notwithstanding paragraph (b) of this section, a registrant will not be eligible to use any registration statement form under the Securities Act of 1933 the use of which is predicated on timely filed reports until the subject report is actually filed pursuant to paragraph (b)(3) of this section.

(e) If a Form 12b-25 filed pursuant to paragraph (a) of this section relates only to a portion of a subject report, the registrant shall:

(1) File the balance of such report and indicate on the cover page thereof which disclosure items are omitted; and

(2) Include, on the upper right corner of the amendment to the report which includes the previously omitted information, the following statement:

The following items were the subject of a Form 12b-25 and are included herein: (*List Item Numbers*)

(f) The provisions of this section shall not apply to financial statements to be filed by amendment to a form 10-K as provided for by paragraph (a) of §210.3-09 or schedules to be filed by amendment in accordance with General Instruction A to form 10-K.

(g) *Electronic filings.* The provisions of this section shall not apply to reports required to be filed in electronic format if the sole reason the report is not filed within the time period prescribed is that the filer is unable to file the report in electronic format. Filers unable to submit a report in electronic format within the time period prescribed solely due to difficulties with electronic filing should comply with either Rule 201 or 202 of Regulation S-T (§232.201 and §232.202 of this chapter), or apply for an adjustment of filing date pursuant to Rule 13(b) of Regulation S-T (§232.13(c) of this chapter).

[45 FR 23652, Apr. 8, 1980, as amended at 50 FR 1449, Jan. 11, 1985; 50 FR 2957, Jan. 23, 1985; 54 FR 10316, Mar. 13, 1989; 58 FR 14683, Mar. 18, 1993; 58 FR 21349, Apr. 21, 1993; 59 FR 67764, Dec. 30, 1994]

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EXHIBITS

§ 240.12b-30 Additional exhibits.

The registrant may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

§ 240.12b-31 Omission of substantially identical documents.

In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the registrant need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The Commission may at any time in its discretion require the filing of copies of any documents so omitted.

§ 240.12b-32 Incorporation of exhibits by reference.

(a) Any document or part thereof filed with the Commission pursuant to any act administered by the Commission may, subject to § 228.10(f) and § 229.10(d) of this chapter be incorporated by reference as an exhibit to any statement or report filed with the Commission by the same or any other person. Any document or part thereof filed with an exchange pursuant to the act may be incorporated by reference as an exhibit to any statement or report filed with the exchange by the same or any other person.

(b) If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant shall file with the reference a statement containing the text of any such modification and the date thereof.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)

[13 FR 9321, Dec. 31, 1948, as amended at 30 FR 2023, Feb. 13, 1965; 60 FR 32825, June 23, 1995]

§ 240.12b-33 Annual reports to other Federal agencies.

Notwithstanding any rule or other requirement to the contrary, whenever copies of an annual report by a registrant to any other Federal agency are required or permitted to be filed as an exhibit to an application or report filed by such registrant with the Commission or with a securities exchange, only one copy of such annual report need be filed with the Commission and one copy thereof with each such exchange, provided appropriate reference to such copy is made in each copy of the application or report filed with the Commission or with such exchange.

[18 FR 1441, Mar. 13, 1953]

SPECIAL PROVISIONS

§ 240.12b-35 [Reserved]

§ 240.12b-36 Use of financial statements filed under other acts.

Where copies of certified financial statements filed under other acts administered by the Commission are filed with a statement or report, the accountant's certificate shall be manually signed or manually signed copies of the certificate shall be filed with the financial statements. Where such financial statements are incorporated by reference in a statement or report, the written consent of the accountant to such incorporation by reference shall be filed with the statement or report. Such consent shall be dated and signed manually.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)

[30 FR 2023, Feb. 13, 1965]

§ 240.12b-37 Satisfaction of filing requirements.

With regard to issuers eligible to rely on Release No. 34-45589 (March 18, 2002) or Release No. IC-25463 (March 18, 2002) (each of which may be viewed on the Commission's website at www.sec.gov), filings made in accordance with the provisions of those Releases shall satisfy the issuer's requirement to make such a filing under Section 13(a), 14 or 15(d) of the Act (15 U.S.C. 77m(a), 78n or